

MEMORANDUM OF DECISION NUMBER: 04-20160583R
Sales and Use Tax
For The 2012 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Based on the submission of purchase documents, sales tax returns, and payment records, the Department held that Indiana Manufacturer was entitled to a supplemental review of the amount of use tax refund it had previously claimed.

ISSUE

I. Sales and Use Tax - Refund.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#).

Taxpayer protests the partial refund denial of use tax which it remitted.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. For the 2012 tax year, Taxpayer purchased diesel fuel and certain tangible personal property to be used in its business. Taxpayer did not pay sales tax at the time when it made some of the purchases. Instead, when Taxpayer filed its monthly sales and use tax returns, ST-103 forms, it remitted the Indiana use tax on the purchase.

Taxpayer subsequently filed a refund claim, GA 110L form (Claim Number 954180), claiming that it was entitled to a refund of \$136,929.12. Upon review, the Indiana Department of Revenue ("Department") granted a partial refund, in the amount of \$117,162.69, but denied the remainder, in the amount of \$19,766.43. Taxpayer protested the Department's partial refund denial. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This decision ensues. Additional information will be provided as necessary.

I. Sales and Use Tax - Refund.

DISCUSSION

Taxpayer claimed that it was entitled to additional refund of the use tax it remitted on its purchases during 2012. The Department, in a July 18, 2016, letter denied a portion of Taxpayer's refund on the ground that "[s]ales tax was not paid and [u]se tax [was] not remitted based [on] documentation provided." Taxpayer submitted additional documentation, including its purchase invoices, ST-103 returns, and payments to support its protest. The issue is whether Taxpayer is entitled to additional refund based on the documentation it now submitted.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the

refund.

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

...

(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) the amount of refund claimed;
- (2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;
- (3) the tax period for which the overpayment is claimed; and
- (4) the year and date the overpayment was made.

The claim for refund shall be filed on a form prescribed by the department.

In this instance, Taxpayer timely filed its claim for refund. Taxpayer stated that the Department denied a portion of its refund claim on the ground that "[s]ales tax was not paid and [u]se tax [was] not remitted based [on] documentation provided." Taxpayer thus offered additional documentation to substantiate that it overpaid the use tax for 2012. Taxpayer maintained that neither Taxpayer nor the Department disagreed that it was entitled to an exemption regarding its purchase of the fuel and certain tangible personal property. Taxpayer thus asserted that it was entitled to additional refund based on the supporting documents it now submitted.

Upon review, the Department's Enforcement Division is requested to conduct a supplemental audit to verify Taxpayer's statement that it is entitled to the additional refund. Pending upon the result of the audit verification, Taxpayer's protest is sustained when the additional refund is issued; otherwise, Taxpayer's protest is respectfully denied.

FINDING

To the extent that the Enforcement Division, upon review, agrees that Taxpayer has established that it is entitled to an additional refund of use tax, Taxpayer's protest is sustained. Otherwise, Taxpayer's protest is respectfully denied.

Posted: 05/31/2017 by Legislative Services Agency

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